IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

Crl.Rev.Pet.No. 4066 of 2006(C)

MC.2/2006 of JUDICIAL FIRST CLASS MAGISTRATE, KOTHAMANGALAM
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REVN. PETITIONER: PETITIONER

KHAMARUNNEESA BEEVI,
D/O.MUHIYIDDEEN MOWLAVI,
PAZHAMPILLIL HOUSE, PALARIMANGALAM,
KOTHAMANGALAM.

BY ADV. SRI.K.ABDUL JAWAD
SRI.S.S.THAJUDEEN

RESPONDENTS: COUNTER PETITIONER & STATE
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1. ABDUL SALAM,
S/O.ABDUL KHADAR,
PARPPIDOM, PALLIMUKKU,
PEYAD, THIRUVANANTHAPURAM.

2. STATE OF KERALA,
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.M.M.HUSAIN
SRI.A.ABSALKHAN

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. R.P. NO. 4066 OF 2006 C

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Dated this the 1st day of March 2007

O R D E R

The revision petitioner is the claimant in M.C. No.2/06 which was dismissed by the court below on the ground that there was no proper divorce as there was no pronouncement of talaq in compliance of legal formalities and also on the ground that petition has been filed after the period of limitation vide Article 137 of Limitation Act. It is pointed out by the revision petitioner that both the grounds cannot be sustained.

2. I find that in the counter statement filed by the respondent/husband the marriage is admitted as well as the divorce. Hence, in the absence of pleadings that there is no proper divorce/talaq, there is is scope for adjudication on the point as to whether the talaq pronounced is legal or not. In paragraph 3 of the counter statement filed by the respondent it is specifically admitted that he divorced the petitioner on the

compulsion of the father of the petitioner. The main contention in the counter statement is that he was not in a position to marry on account of ill health and poverty and it was not with his consent that the marriage was conducted and that he has no means at all to pay any amount to the petitioner. I find that there is no specific contention for the respondent in the counter statement filed that the formalities of the talaq, as per the stipulations of the Muhammadan Law, has not been complied with. It is after the petitioner produced Ext.P1, talaq nama that the case is developed that the formalities of the talaq has not been complied with. I find that there is no scope for such contentions in view of the admission in his pleadings that there was divorce. I find that the above finding of the court below that there was no proper divorce cannot be sustained.

3. So far as the contention that the application has been filed beyond the period of limitation, the finding is that the petitioner has not specified the date on which the respondent

refused to pay the maintenance. According to the petitioner, he was promising to pay the amount and was for just protracting the matter. The date of talaq is on 15.11.1999. The petition has been filed on 03.12.2003 which is beyond the period of limitation, vide section 137 of the Limitation Act, by about 1 year. The counsel for the revision petitioner has cited the decision in **Hassainar v. Raziya** (1993(2) KLT 805) as per which this court has held that in a case where the respondent has no case that he refused to pay maintenance at any time before three years counted backwards from the date of the petition he cannot raise such contention that the claim barred by limitation. In the circumstances of the case and in the light of the above cited decision I find that the finding on the above point also cannot be upheld. In the circumstances, the revision petition is allowed. The order of the court below is set aside.

4. The court below has not considered points 3 to 5 raised in M.C. No. 2/06. Hence, the matter is remitted back to the court

below to consider the above points after affording opportunity to the parties to adduce further evidence if they so desire. The parties shall appear before Judicial First Class Magistrate, Kothamangalam on **30.03.2007**. The matter shall be disposed of at the earliest, at any rate, within six months from the date of receipt of this order.

The Crl. R.P is disposed of accordingly.

K.R. UDAYABHANU, JUDGE.

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